T.D. INFORMAL MEMO: DO NOT MAIL THIS MEMO TO APPLICANT

Date:			09/25/08	APPL. S. N:	10776579			
To Exam	niner:		HO, DUC	Art Unit	2619			
From			HENRY JEFFERSON PARALEGAL SPCECIALIST	Return This Memo To: Case Drop-Off Location	2D30			
SUBJEC	T: Decisio	on on Termina	l Disclaimer(T.D.) filed:					
form pa or have	ragraphs i any quest	identified by t tions, please s	his informal memo in your r see me or the Special Progra	he results as set forth below. If you lext Office action to notify applicant Im Examiner. THIS IS AN INFORMAL D OF RECORD IN THE APPLICATION	of the T.D. If you disagree _, INTERNAL MEMO ONLY.			
olease ii	nitial, date	e and return t	his memo to me. THANK YO	U.				
<u>~</u>	The T.D.	is PROPER a	nd has been recorded (see 1	.4.23).				
Γ.	The T.D.	is NOT PROP	ER and has not been accept	ed for the reason(s) checked below	(see 14.24):			
		The TD fee ofihas not been submitted nor is there any authorization in the application file for the use of a deposit account						
		The T.D. does not satisfy Rule 321 in that the person who has signed the T.D. has not stated the extent of his/her interest (and/or the extent of the interest of the business entity represented by the signature) in the application/patent (see 14.26 & 14.26.01).						
	- 🗔	The T.D. lacks the enforceable only during common ownership clause - needed to overcome a non-statutory double patenting rejection, Rule 321(b) (see 14.27.01).						
	The T.D. is directed to a particular claim(s), which is not acceptable since "the disclaimer must be for a term portion of the term of the entire patent to be granted" (MPEP 1490) (see 14.26 & 14.26.02).							
The person who signed the T.D.:								
		is r	not an attorney "of record" (see 14.29 and 14.29.01).	•			
		has	s failed to state his/her capa	city to sign for the business entity (see 14.28).			
		is r	not recognized as an officer	of the assignee (see 14.29 & possibl	le 14.29.02).			
		nor is the re (see 37 CFR	el and frame number specifi 3.73(b) and 1140 O.G. 72)	itle from the original inventor(s) to ed as to where such evidence is rec NOTE: This documentary evidence or in a separate paper of record in t	orded in the Office or the specifying of the reel and			
The T.D. is no		The T.D. is r	not signed (see 14.26 & 14.2	26.03).				
		The serial number of the application (or the number of the patent) which forms the basis for the patenting rejection is missing or incorrect (see 14.32).						
		The serial number of this application (or the number of the patent in reexam or reissue cases being disclaimed is missing or incorrect (see 14.26, 14.27.02 or 14.26.05).						
		The period disclaimed is incorrect or not specified (see 14.26, 14.27.02 or 14.26.03).						
	Γ	Other:			TY.			
			to request refund (see 14.36 theck this item.	6). NOTE: If already authorized, cred	dit refund to deposit account			
I have a	ppropriat	ely notified ap	oplicant(s) of the status of th	ne Terminal Disclaimer filed in this ca	ase.			
Ex.Initia	als:	Da	te:		Log Date:			

Application Number	10/776,579		Applicant(s)/Patent under Reexamination GORDY ET AL.					
Document Code - DISQ	Internal Document – DO		NOT MAIL					
TERMINAL DISCLAIMER	☑ APPROVED		☐ DISAPP	☐ DISAPPROVED				
Date Filed : September 19, 2008	This patent is subject to a Terminal Disclaimer		,					
Approved/Disapproved by:								
Henry D. Jefferson								
		·						

U.S. Patent and Trademark Office

PTO/SB/26 (08-08)

Approved for use through 09/30/2008. OMB 0551-0031

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12,1

TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING REJECTION OVER A "PRIOR" PATENT	Docket Number (Optional) 15436.204.3							
In re Application of: Stephen C. Gordy, et al.								
Application No.: 10/776,579								
Filed: February 11, 2004								
For: NETWORK TAP WITH INTEGRATED CIRCUITRY								
The owner*, <u>FINISAR CORPORATION</u> , of <u>100</u> percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the Instant application which would extend beyond the expiration date of the full statutory term prior patent No. <u>7,308,705</u> as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.								
In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later: expires for failure to pay a maintenance fee; is held unenforceable;								
is found invalid by a court of competent jurisdiction; is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321; has all claims canceled by a reexamination certificate;	. · · · · · · · · · · · · · · · · · · ·							
is reissued; or is in any manner terminated prior to the expiration of its full statutory term as presently shortened t	y any terminal disclaimer.							
Check either box 1 or 2 below, if appropriate.								
1. For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.								
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.								
2. The undersigned is an attorney or agent of record. Reg. No. 45576								
/Peter F. Malen, Jr./ Reg. #45576	09/19/2008							
Signature.	Date							
	· · · · · · · · · · · · · · · · · · ·							
Peter F. Malen, Jr.								
Typed or printed name								
	801-533-9800							
	Telephone Number							
Terminal disclaimer fee under 37 CFR 1.20(d) included.								
WARNING: Information on this form may become public. Credit card-inform be included on this form. Provide credit card information and authorization	ation should not							
*Statement, under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).								

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

 The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.

 A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to

opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

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5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to

the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent...

A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential

violation of law or regulation.